

is evidence that the USF monies received by SIC were not used for their intended purpose.³⁹ According to the Consumer Advocate:

As set forth in 47 C.F.R. §54.8, "[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized" can be suspended or debarred from participating from universal support as a result of any of the following:

. . . conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism.⁴⁰

Because of Mr. Hee's conviction, the Consumer Advocate has concerns about whether USF monies received by SIC were used for [their] intended purpose.⁴¹ Due to these concerns, the Consumer Advocate was not able to support certification of SIC and Pa Makani as high-cost ETCs. The commission agrees with these concerns and determines that they create uncertainty regarding the

³⁹Consumer Advocate's SOP at 5 (footnotes omitted).

⁴⁰Consumer Advocate's SOP at 5-6 (footnotes omitted).

⁴¹Consumer Advocate's SOP at 4.

second issue to be addressed in this docket concerning the use of high-cost support.

The Consumer Advocate recommended that the commission withhold certification to SIC and Pa Makani until both companies provide the commission and the Consumer Advocate with, among other things, a detailed report on certain issues, including whether any of the expenses identified in Mr. Hee's criminal trial that were deemed to be "personal expenses" and, therefore, not properly expensed as business-related expenses, were paid with either USF or Rural Utilities Service monies.⁴² In light of Mr. Hee's conviction, the Consumer Advocate stated that additional information is necessary to adequately support SIC's and Pa Makani's certification,⁴³ and that certification is premature "until the concerns and issues associated with Mr. Hee's conviction and the reduced USF funding are addressed."⁴⁴

SIC and Pa Makani admitted that the recent court decision relating to Mr. Hee's personal actions has resulted in inquiries from organizations such as the

⁴²Consumer Advocate's SOP at 7.

⁴³Consumer Advocate's SOP at 3.

⁴⁴Consumer Advocate's SOP at 5-6, which reflects that SIC did not receive a universal service disbursement through the high-cost mechanism in June 2015, and that further, it was required to remit monies for the Lifeline mechanism in July 2015 (footnotes omitted).

Department of Hawaiian Home Lands (DHHL), the USAC, the FCC, and other organizations that have partnered with SIC since its inception more than 20 years ago.⁴⁵ However, SIC and Pa Makani subsequently asserted that: (1) Mr. Hee's conviction does not alter SIC's ability to provide telecommunications services; (2) SIC will still be able to provide telecommunication services even with reduced disbursements from USAC; and (3) telecommunications services to the homesteaders on Hawaiian Home Lands will not be impaired by the investigation or the temporary reduction in disbursements from USAC.⁴⁶

Despite SIC's and Pa Makani's assertions, the commission observes that "the USAC has been directed by the Federal Communications Commission (FCC or Commission) to suspend Sandwich Isles Communications, Inc. (Sandwich Isles), study area code 623021, High Cost Program support beginning with the disbursements which were due July 2015."⁴⁷ According to

⁴⁵SIC's and Pa Makani's August 18, 2015 "Response to Division of Consumer Advocacy's Second Submission of Information Requests" ("Response to Second IRs"), at 2.

⁴⁶SIC and Pa Makani's August 20, 2015 "Response to the Division of Consumer Advocacy's Statement of Position Dated August 17, 2015" ("RSOP"), at 11-12.

⁴⁷Response to Second IRs, CA-IR-13 Exhibit 1 at 1 (Letter dated August 7, 2015, to SIC Controller, Abby Tawarahara, from USAC High Cost Program Vice President, Karen Majcher ("August 7 Letter")).

Ms. Majcher (USAC High Cost Program Vice President), Mr. Hee's conviction for federal tax fraud is a concern for the FCC and USAC given management fees paid by SIC to its parent, Waimana, that are recovered through the High Cost Program support mechanisms.⁴⁸

Further:

The conviction and the facts surrounding the case have brought into sharper focus questions about the nature of many of [SIC's] expenses as well as whether [SIC's] affiliate transactions are consistent with FCC rules and policies that govern the Universal Service Fund (USF) and High Cost Program as set forth in 47 C.F.R. Part 54, Subpart E and 47 C.F.R. § 32.27. Accordingly, the FCC has directed USAC to initiate this suspension pending completion of a further investigation and possible other ameliorative measures to ensure that any USF support provided is used solely in a manner consistent with Commission rules and policies.⁴⁹

Consistent with the USAC's August 7 Letter, Ms. Tawarahara (SIC's Controller) was informed, on August 13, 2015, by USAC's Internal Audit Division, of the following:

The Universal Service Administrative Company (USAC) Internal Audit Division (IAD) will undertake certain factual inquiries of [SIC] for the data years 2002 to 2015. The purpose of this examination is to determine whether [SIC] complied with applicable [FCC] rules, state laws, and related

Response to Second IRs, CA-IR-13 at 2, wherein SIC also acknowledges that the FCC "has directed USAC to suspend high cost support payments to SIC in response to Mr. Hee's conviction pending further investigation by the FCC."

⁴⁸August 7 Letter at 1.

⁴⁹August 7 Letter at 1.

High Cost Program requirements (collectively, the Rules) and to assess the accuracy of the underlying data used for the calculation of High Cost Loop Support (HCLS), Local Switching Support (LSS), Interstate Common Line Support (ICLS), Safety Net Additive (SNA), and Interstate Carrier Compensation (ICC)."⁵⁰

According to the USAC's IAD, the examination is estimated to be completed by December 2015; however, that anticipatory time reference is dependent upon other outside factors.⁵¹

SIC and Pa Makani contended that "the intense scrutiny currently focused on SIC and SIW by USAC and the FCC regarding the past, present, and future use of Universal Service funds leaves no reason for concern regarding SIC's and SIW's future expenditure of Universal Service funds."⁵² The commission notes that the scrutiny was initiated despite the certifications SIC and Pa Makani made to the commission in 2014 ("2014 certifications"), regarding their purported appropriate use of universal service support funds. The certifications made by SIC and Pa Makani to the commission in 2015 ("2015 certifications") are nearly identical to the 2014 certifications. In light of the 2014 certifications,

⁵⁰Response to Second IRs, CA-IR-13 Exhibit 1 at 2-3 (Letter dated August 13, 2015, to Ms. Tawarahara, from USAC IAD Vice President, Wayne M. Scott ("August 13 Letter"), at 1).

⁵¹August 13 Letter at 2.

⁵²RSOP at 11.

the "intense scrutiny" brings into question whether SIC and Pa Makani should be eligible for commission certification in 2015, pursuant to 47 C.F.R. § 54.314(a).

The commission observes that SIC and Pa Makani are inextricably interconnected and interrelated. Thus, given the uncertainty as to whether all federal high-cost support provided to SIC was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, and pending completion of the USAC IAD's examination pursuant to 47 C.F.R. § 54.314(a), the commission agrees with the Consumer Advocate, and concludes that certification of SIC and Pa Makani as high-cost ETCs at this time is premature.

The commission adds that because SIC's high-cost disbursements which were due July 2015 have been suspended by the USAC, certification at this time by the commission, if it had been warranted, would be ineffectual.

C.

Summary of Findings and Conclusions

Based on its review of the entire record, the commission finds and concludes that (1) HTI and Mobi have each sufficiently complied with the Annual Certification Requirements adopted by the commission in Decision and Order No. 30932; and (2) there is no

uncertainty as to whether all federal high-cost support provided to HTI and Mobi was used and will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to 47 C.F.R. § 54.314(a). As such, the commission concludes that HTI and Mobi should be certified by the commission as USF high-cost ETCs.

The commission further finds and concludes that despite SIC and Pa Makani having complied with the Annual Certification Requirements, there remains uncertainty as to whether all federal high-cost support provided to SIC and Pa Makani was used and will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to 47 C.F.R. § 54.314(a). As such, the commission concludes that certification of SIC and Pa Makani by the commission as USF high-cost ETCs at this time is premature.⁵³

⁵³The commission recognizes that, pursuant to its Order Initiating Investigation at 2-3, it must act on or before October 1, 2015, for ETCs to receive high-cost support in the first, second, third, and fourth quarters of the succeeding year.

Thus, if the certification is filed after the October 1, 2015 deadline, ETCs will not be eligible to receive USF high-cost support for all quarters in 2016. However, given the circumstances which are germane to this docket and to certain of the ETC Parties herein, namely SIC and Pa Makani, the commission, as warranted, may file § 54.314(a) certifications to the FCC and USAC on a quarterly basis, for the remaining three quarters in 2016, in accordance with 47 C.F.R. § 54.314(d).

III.

Orders

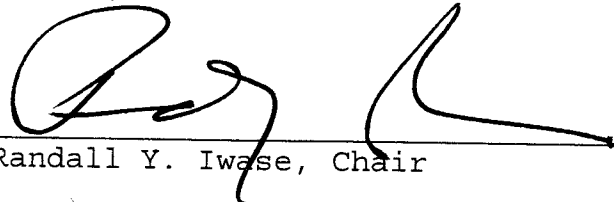
1. Certification pursuant to 47 C.F.R. § 54.314(a), that all federal high-cost USF support provided to HTI and Mobi was used in the preceding calendar year and will be used in the coming calendar year, only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, is hereby provided to the FCC and USAC.

2. Certification to the FCC and USAC pursuant to 47 C.F.R. § 54.314(a), that all federal high-cost USF support provided to SIC and Pa Makani was used in the preceding calendar year and will be used in the coming calendar year, only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, cannot be made at this time.

3. This docket is closed unless ordered otherwise by the commission.

DONE at Honolulu, Hawaii SEP 28 2015.

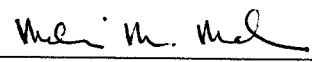
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Randall Y. Iwase, Chair

By 
Michael E. Champley, Commissioner

By 
Lorraine H. Akiba, Commissioner

APPROVED AS TO FORM:


Melissa M. Mash
Commission Counsel

2015-0083.ljk

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail,
postage prepaid, and properly addressed to the following parties:

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